

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ACADIA INSURANCE COMPANY)
as Subrogee of St. Paul Street, LLC)
1 Acadia Commons)
Westbrook, ME 04908)
Plaintiff)

v.)

CIVIL ACTION NO. 04-12557 WGY

NER CONSTRUCTION MGMT., INC.)
867 Woburn Street)
Wilmington, MA 01887)
Defendant)

**DEFENDANT'S OPPOSITION TO PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT**

Now comes the defendant in the above referenced matter and hereby requests that this Court deny the plaintiff's Motion for Default Judgment.

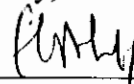
As support, the defendant avers:

1. Conrad J. Bletzer, Jr. is counsel to NER Construction Management, Inc. [NER].
2. On April 1, 2004, Attorney Bletzer answered a correspondence from the attorney for the plaintiff. In Attorney Bletzer's correspondence he requested that any further communications be sent to his attention. See attached as Exhibit A, a copy of a letter from Attorney Bletzer.
3. Immediately after the complaint was filed in this case, the defense of this case was turned over to NER's insurer RSUI Group. The insurer was to file an answer to this case and defend the case accordingly.
4. The Affidavit of Attorney Patrick J. Loftus, III filed in conjunction with his motion for default judgment indicates that the insurer, RSUI Group, obtained a 30 day extension to answer the Complaint. Thereafter, until May 11, 2005, two months after the default occurred, there were conversations between attorney Loftus and Ms. Huber from the insurer regarding the answer.
5. NER's insurer apparently did not file an answer to the case and, in fact, allowed NER to be defaulted.

6. None of the correspondence between plaintiff and defendant or court filings were forwarded to Attorney Bletzer, despite his request in the April 1, 2004 letter.
7. Without notice to Attorney Bletzer, NER's insurer seemingly denied coverage and let its insured fall into default on this case.
8. NER did not know that a default had occurred or that their answer had not been filed in this case until it received a copy of a June 28, 2005 letter from Attorney Patrick J. Loftus, III.
9. Immediately upon receipt of that letter, NER contacted attorney Bletzer who immediately called Attorney Loftus to try to resolve this matter. Unfortunately, Attorney Bletzer was unable to reach Attorney Loftus.
10. NER has a valid defense to this claim as, according to the affidavit of Mark Brown, I attached hereto, NER was not negligent, did not breach any warranties and did not start or contribute to the cause of the fire.
11. The failure to file an answer in this case was due to inadvertence and was not the fault of NER.
12. The Plaintiff will not be prejudiced by the allowance of this motion.
13. The Defendant, NER merely seeks its day in court.
14. This motion should be allowed in the interest of justice.

For the foregoing reasons, the defendant hereby respectfully requests that this Court deny the plaintiff's Motion for Deafault Judgment.

Respectfully submitted for the defendant,
by its attorney,



Conrad J. Bletzer, Jr.
Bletzer & Bletzer, P.C.
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Brighton, MA 02135
(617) 254-8900
BBO # 045760

Dated: July 5, 2005

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Of Counsel:
Hon. Conrad J. Bletzer (Ret.)

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April 1, 2004

Robert M. Kaplan, Esq.
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103-3508

Re: Fire on St. Paul Street Brookline, MA on January 31, 2004

Dear Attorney Kaplan:

Please be advised that this office represents NER Construction Management, Inc. with respect to the above referenced matter. I am in receipt of your letter of March 12, 2004. NER vehemently disputes the allegations set forth in that letter.

To begin, NER was not on site on the day of the loss. Contrary to your baseless allegations, NER did not have any flammable materials stored in the basement of the site at the time of the fire. Also, no representative of NER removed *anything* from the site after the loss. The allegation that any representative of NER "removed some critical evidence" is ludicrous and patently false. Mark Brown went to the site and did an investigation for NER but did not carry away anything from the site. As such, NER is not in possession of any physical evidence that would aid an investigation.

If your client undertakes another investigation of the premises, a representative of NER would like to be present. Given the wild speculation that your letter is mired in, it seems the only way to protect my client's interests. Please direct any further communications regarding this loss to my attention. Thank you for your courtesy and cooperation in this regard.

Sincerely,

Conrad J. Bletzer, Jr.

NER/St Paul Street Fire

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April 13, 2004

Robert M. Caplan
Direct Phone 215.665.4191
Direct Fax 215.701.2491
rcaplan@cozen.com

Conrad J. Bletzer, Jr.
Bletzer & Bletzer, P.C.
300 Market Street
Brighton, MA 02135

Re:	Insureds:	St. Paul Street, LLC and Raymond Property Company
	Date of Loss:	1/31/2004
	Claim No.:	20001173
	Loss Location:	St. Paul Street Brookline, MA
	<u>Our File No:</u>	<u>149313</u>

Dear Mr. Bletzer:

I am in receipt of your April 1, 2004 letter regarding representation of NER Construction Management, Inc. Per your request, all further correspondence will be directed to your attention on this matter.

In response to your assertions, my client stands by its notice letter and we will provide you with copies of photographs taken by the Brookline Fire Department confirming flammable materials were stored by your client in the basement of our insured's facility without the proper permits. We will address the other issues contained in your letter through the discovery process once a lawsuit is filed.

April 13, 2004
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Once the loss adjustment is completed, I will forward you copies of all damage supports together with a demand letter so that we may discuss an amicable resolution of the matter. To the extent you wish to discuss the matter further, please do not hesitate to contact me directly. At this point in time, based upon your representations that Mark Brown was present at the site and did an investigation for NER, another site investigation will not be productive, as reconstruction has begun. Accordingly, should you wish to discuss any matter or have any questions, please do not hesitate to contact me directly.

Very truly yours,

COZEN O'CONNOR

A handwritten signature in black ink, appearing to read "R. Caplan", written over a horizontal line.

BY: Robert M. Caplan

RMC/jk

cc: Mr. Benjamin Spike, General Adjuster